

ESB 6610 - H AMD 1358

By Representative Dickerson

ADOPTED 3/02/2010

Strike everything after the enacting clause and insert the following:

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2
3 "NEW SECTION. **Sec. 1.** (1) The Washington state institute for
4 public policy shall, in collaboration with the department of social
5 and health services and other applicable entities, undertake a search
6 for validated mental health assessment tools in each of the following
7 areas:

8 (a) An assessment tool or combination of tools to be used by
9 individuals performing court-ordered competency assessments and level
10 of risk assessments of defendants pursuant to chapter 10.77 RCW; and

11 (b) An assessment tool or combination of tools to be used by
12 individuals developing recommendations to courts as to the
13 appropriateness of conditional release from inpatient treatment of
14 criminally insane patients pursuant to chapter 10.77 RCW.

15 (2) This section expires June 30, 2011.

16 **Sec. 2.** RCW 10.77.120 and 2000 c 94 s 15 are each amended to read
17 as follows:

18 (1) The secretary shall (~~forthwith~~) provide adequate care and
19 individualized treatment to persons found criminally insane at one or
20 several of the state institutions or facilities under (~~his or her~~)
21 the direction and control (~~wherein persons committed as criminally~~
22 ~~insane may be confined. Such persons shall be under the custody and~~
23 ~~control of the secretary to the same extent as are other persons who~~
24 ~~are committed to the secretary's custody, but such provision shall be~~
25 ~~made for their control, care, and treatment as is proper in view of~~
26 ~~their condition~~)) of the secretary. In order that the secretary may
27 adequately determine the nature of the mental illness or developmental

1 disability of the person committed (~~to him or her~~) as criminally
2 insane, (~~and in order for the secretary to place such individuals in~~
3 ~~a proper facility,~~) all persons who are committed to the secretary as
4 criminally insane shall be promptly examined by qualified personnel in
5 (~~such a manner as~~) order to provide a proper evaluation and
6 diagnosis of such individual. The examinations of all
7 (~~developmentally disabled~~) persons with developmental disabilities
8 committed under this chapter shall be performed by developmental
9 disabilities professionals. Any person so committed shall not be
10 released from the control of the secretary (~~save upon the~~) except by
11 order of a court of competent jurisdiction made after a hearing and
12 judgment of release.

13 (2) Whenever there is a hearing which the committed person is
14 entitled to attend, the secretary shall send (~~him or her~~) the person
15 in the custody of one or more department employees to the county
16 (~~where~~) in which the hearing is to be held at the time the case is
17 called for trial. During the time the person is absent from the
18 facility, (~~he or she shall~~) the person may be confined in a facility
19 designated by and arranged for by the department, (~~and~~) but shall at
20 all times be deemed to be in the custody of the department employee
21 and provided necessary treatment. If the decision of the hearing
22 remits the person to custody, the department employee shall
23 (~~forthwith~~) return the person to such institution or facility
24 designated by the secretary. If the state appeals an order of
25 release, such appeal shall operate as a stay, and the person shall
26 remain in custody (~~shall so remain~~) and be (~~forthwith~~) returned to
27 the institution or facility designated by the secretary until a final
28 decision has been rendered in the cause.

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30 **Sec. 3.** RCW 10.77.150 and 1998 c 297 s 41 are each amended to
31 read as follows:

32 (1) Persons examined pursuant to RCW 10.77.140 may make
33 application to the secretary for conditional release. The secretary
34 shall, after considering the reports of experts or professional

1 persons conducting the examination pursuant to RCW 10.77.140, forward
2 to the court of the county which ordered the person's commitment the
3 person's application for conditional release as well as the
4 secretary's recommendations concerning the application and any
5 proposed terms and conditions upon which the secretary reasonably
6 believes the person can be conditionally released. Conditional
7 release may also contemplate partial release for work, training, or
8 educational purposes.

9 (2) In instances in which persons examined pursuant to RCW
10 10.77.140 have not made application to the secretary for conditional
11 release, but the secretary, after considering the reports of experts
12 or professional persons conducting the examination pursuant to RCW
13 10.77.140, reasonably believes the person may be conditionally
14 released, the secretary may submit a recommendation for release to the
15 court of the county which ordered the person's commitment. The
16 secretary's recommendation must include any proposed terms and
17 conditions upon which the secretary reasonably believes the person may
18 be conditionally released. Conditional release may also include
19 partial release for work, training, or educational purposes. Notice
20 of the secretary's recommendation under this subsection must be
21 provided to the person for whom the secretary has made the
22 recommendation for release and to his or her attorney.

23 (3)(a) The court of the county which ordered the person's
24 commitment, upon receipt of an application or recommendation for
25 conditional release with the secretary's recommendation for
26 conditional release terms and conditions, shall within thirty days
27 schedule a hearing. The court may schedule a hearing on applications
28 recommended for disapproval by the secretary.

29 (b) The prosecuting attorney shall represent the state at such
30 hearings and shall have the right to have the patient examined by an
31 expert or professional person of the prosecuting attorney's choice.
32 If the committed person is indigent, and he or she so requests, the
33 court shall appoint a qualified expert or professional person to
34 examine the person on his or her behalf.

1 (c) The issue to be determined at such a hearing is whether or not
2 the person may be released conditionally without substantial danger to
3 other persons, or substantial likelihood of committing criminal acts
4 jeopardizing public safety or security.

5 (d) The court, after the hearing, shall rule on the secretary's
6 recommendations, and if it disapproves of conditional release, may do
7 so only on the basis of substantial evidence. The court may modify
8 the suggested terms and conditions on which the person is to be
9 conditionally released. Pursuant to the determination of the court
10 after hearing, the committed person shall thereupon be released on
11 such conditions as the court determines to be necessary, or shall be
12 remitted to the custody of the secretary. If the order of conditional
13 release includes a requirement for the committed person to report to a
14 community corrections officer, the order shall also specify that the
15 conditionally released person shall be under the supervision of the
16 secretary of corrections or such person as the secretary of
17 corrections may designate and shall follow explicitly the instructions
18 of the secretary of corrections including reporting as directed to a
19 community corrections officer, remaining within prescribed
20 geographical boundaries, and notifying the community corrections
21 officer prior to making any change in the offender's address or
22 employment. If the order of conditional release includes a
23 requirement for the committed person to report to a community
24 corrections officer, the community corrections officer shall notify
25 the secretary or the secretary's designee, if the person is not in
26 compliance with the court-ordered conditions of release.

27 ((3))(4) If the court determines that receiving regular or
28 periodic medication or other medical treatment shall be a condition of
29 the committed person's release, then the court shall require him or
30 her to report to a physician or other medical or mental health
31 practitioner for the medication or treatment. In addition to
32 submitting any report required by RCW 10.77.160, the physician or
33 other medical or mental health practitioner shall immediately upon the
34 released person's failure to appear for the medication or treatment or

1 upon a change in mental health condition that renders the patient a
2 potential risk to the public report (~~the failure~~) to the court, to
3 the prosecuting attorney of the county in which the released person
4 was committed, to the secretary, and to the supervising community
5 corrections officer.

6 ((+4)) (5) Any person, whose application for conditional release
7 has been denied, may reapply after a period of six months from the
8 date of denial.

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10 **Sec. 4.** RCW 10.77.160 and 1993 c 31 s 7 are each amended to read
11 as follows:

12 When a conditionally released person is required by the terms of
13 his or her conditional release to report to a physician, department of
14 corrections community corrections officer, or medical or mental health
15 practitioner on a regular or periodic basis, the physician, department
16 of corrections community corrections officer, medical or mental health
17 practitioner, or other such person shall monthly, for the first six
18 months after release and semiannually thereafter, or as otherwise
19 directed by the court, submit to the court, the secretary, the
20 institution from which released, and to the prosecuting attorney of
21 the county in which the person was committed, a report stating whether
22 the person is adhering to the terms and conditions of his or her
23 conditional release, and detailing any arrests or criminal charges
24 filed and any significant change in the person's mental health
25 condition or other circumstances.

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27 **Sec. 5.** RCW 10.77.190 and 1998 c 297 s 43 are each amended to
28 read as follows:

29 (1) Any person submitting reports pursuant to RCW 10.77.160, the
30 secretary, or the prosecuting attorney may petition the court to, or
31 the court on its own motion may schedule an immediate hearing for the
32 purpose of modifying the terms of conditional release if the
33 petitioner or the court believes the released person is failing to
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1 adhere to the terms and conditions of his or her conditional release
2 or is in need of additional care and treatment.

3 (2) If the prosecuting attorney, the secretary of social and
4 health services, the secretary of corrections, or the court, after
5 examining the report filed with them pursuant to RCW 10.77.160, or
6 based on other information received by them, reasonably believes that
7 a conditionally released person is failing to adhere to the terms and
8 conditions of his or her conditional release the court or secretary of
9 social and health services or the secretary of corrections may order
10 that the conditionally released person be apprehended and taken into
11 custody (~~((until such time as a hearing can be scheduled to determine
12 the facts and whether or not the person's conditional release should
13 be revoked or modified))~~). The court shall be notified of the
14 apprehension before the close of the next judicial day (~~((of the
15 apprehension))~~). The court shall schedule a hearing within thirty days
16 to determine whether or not the person's conditional release should be
17 modified or revoked. Both the prosecuting attorney and the
18 conditionally released person shall have the right to request an
19 immediate mental examination of the conditionally released person. If
20 the conditionally released person is indigent, the court or secretary
21 of social and health services or the secretary of corrections or their
22 designees shall, upon request, assist him or her in obtaining a
23 qualified expert or professional person to conduct the examination.

24 (3) If the hospital or facility designated to provide outpatient
25 care determines that a conditionally released person presents a threat
26 to public safety, the hospital or facility shall immediately notify
27 the secretary of social and health services or the secretary of
28 corrections or their designees. The secretary shall order that the
29 conditionally released person be apprehended and taken into custody.

30 (4) The court, upon receiving notification of the apprehension,
31 shall promptly schedule a hearing. The issue to be determined is
32 whether the conditionally released person did or did not adhere to the
33 terms and conditions of his or her release, or whether the person
34 presents a threat to public safety. Pursuant to the determination of

1 the court upon such hearing, the conditionally released person shall
2 either continue to be conditionally released on the same or modified
3 conditions or his or her conditional release shall be revoked and he
4 or she shall be committed subject to release only in accordance with
5 provisions of this chapter.

6
7 **Sec. 6.** RCW 10.77.200 and 2000 c 94 s 16 are each amended to read
8 as follows:

9 (1) Upon application by the committed or conditionally released
10 person, the secretary shall determine whether or not reasonable
11 grounds exist for release. In making this determination, the
12 secretary may consider the reports filed under RCW 10.77.060,
13 10.77.110, 10.77.140, and 10.77.160, and other reports and evaluations
14 provided by professionals familiar with the case. If the secretary
15 approves the release he or she then shall authorize the person to
16 petition the court.

17 (2) In instances in which persons have not made application for
18 release, but the secretary believes, after consideration of the
19 reports filed under RCW 10.77.060, 10.77.110, 10.77.140, and
20 10.77.160, and other reports and evaluations provided by professionals
21 familiar with the case, that reasonable grounds exist for release, the
22 secretary may petition the court. If the secretary petitions the
23 court for release under this subsection, notice of the petition must
24 be provided to the person who is the subject of the petition and to
25 his or her attorney.

26 (3) The petition shall be served upon the court and the
27 prosecuting attorney. The court, upon receipt of the petition for
28 release, shall within forty-five days order a hearing. Continuance of
29 the hearing date shall only be allowed for good cause shown. The
30 prosecuting attorney shall represent the state, and shall have the
31 right to have the petitioner examined by an expert or professional
32 person of the prosecuting attorney's choice. If the petitioner is
33 indigent, and the person so requests, the court shall appoint a
34 qualified expert or professional person to examine him or her. If the

1 petitioner (~~(is developmentally disabled)~~) has a developmental
2 disability, the examination shall be performed by a developmental
3 disabilities professional. The hearing shall be before a jury if
4 demanded by either the petitioner or the prosecuting attorney. The
5 burden of proof shall be upon the petitioner to show by a
6 preponderance of the evidence that the petitioner no longer presents,
7 as a result of a mental disease or defect, a substantial danger to
8 other persons, or a substantial likelihood of committing criminal acts
9 jeopardizing public safety or security, unless kept under further
10 control by the court or other persons or institutions.

11 ~~((+3))~~ (4) For purposes of this section, a person affected by
12 a mental disease or defect in a state of remission is considered to
13 have a mental disease or defect requiring supervision when the
14 disease may, with reasonable medical probability, occasionally
15 become active and, when active, render the person a danger to
16 others. Upon a finding that the petitioner has a mental disease or
17 defect in a state of remission under this subsection, the court may
18 deny release, or place or continue such a person on conditional
19 release.

20 (5) Nothing contained in this chapter shall prohibit the patient
21 from petitioning the court for release or conditional release from the
22 institution in which he or she is committed. The issue to be
23 determined on such proceeding is whether the petitioner, as a result
24 of a mental disease or defect, is a substantial danger to other
25 persons, or presents a substantial likelihood of committing criminal
26 acts jeopardizing public safety or security, unless kept under further
27 control by the court or other persons or institutions.

28 (6) Nothing contained in this chapter shall prohibit the committed
29 person from petitioning for release by writ of habeas corpus.

30
31 NEW SECTION. Sec. 7. A new section is added to chapter 10.77 RCW
32 to read as follows:

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1 (1) The department shall review the costs of the operation of each
2 of the following boards and the rates of recidivism and treatment
3 outcomes for the populations under their jurisdiction as follows:

4 (a) The Oregon psychiatric security review board's administration
5 of cases involving: (i) Persons judged to be guilty except for
6 insanity; (ii) persons who would have been guilty of a felony or
7 misdemeanor that caused or risked physical injury to another except
8 for insanity; and (iii) persons affected by mental illness and
9 determined to be a substantial danger to others; and

10 (b) The Virginia community services boards' administration of
11 cases involving persons found not guilty by reason of insanity.

12 (2) The department shall report the results of its review to the
13 appropriate committees of the legislature by December 15, 2010.

14

15 NEW SECTION. **Sec. 8.** A new section is added to chapter 10.77 RCW
16 to read as follows:

17 For persons who have received court approval for conditional
18 release, the secretary or the secretary's designee shall supervise the
19 person's compliance with the court-ordered conditions of release. The
20 level of supervision provided by the secretary shall correspond to the
21 level of the person's public safety risk. In undertaking supervision
22 of persons under this section, the secretary shall coordinate with any
23 treatment providers designated pursuant to RCW 10.77.150(3), any
24 department of corrections staff designated pursuant to RCW
25 10.77.150(2), and local law enforcement, if appropriate. The
26 secretary shall adopt rules to implement this section."

27

28 Correct the title.

29

30 **EFFECT:** (1) Eliminates the independent Public Safety Review Panel.

31 (2) Removes the provisions which authorize the Secretary of
32 DSHS to place a person in a Department of Corrections (DOC) facility
33 if that person presents an unreasonable safety risk in the state
34 hospital setting.

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1 (3) Adds the requirement that where the Secretary of the
2 Department of Social and Health Services (DSHS) recommends a
3 conditional release or petitions the court for release on behalf of
4 a patient, notice must be given to the patient and his or her
5 counsel; upon a petition for release, removes the provision that the
6 Secretary of DSHS must be represented by the Attorney General.

7 (4) Adds the requirement that if a committed person is under
8 the supervision of a Community Corrections Officer (CCO), the CCO
9 must notify the Secretary of DSHS if the person is not in compliance
10 with the court-ordered conditions of release.

11 (5) Clarifies the requirement that where a committed person, as
12 a condition of conditional release, must report to a physician or
13 other health practitioner for medication or treatment, the physician
14 must, upon observing a change in the mental health condition that
15 renders a patient a potential risk to the public, immediately report
16 such information to the court, prosecuting attorney, and the
17 Secretary of DSHS.

18 (6) Clarifies that the court may deny release, place a person
19 on conditional release, or continue a person on conditional release
20 when a person who is committed or on conditional request has
21 petitioned the court for final discharge and the court has made a
22 finding that the petitioner suffers from a mental disease that is in
23 remission.

24 (7) Adds the requirement that the Secretary of DSHS, in
25 coordination with DOC and local law enforcement, must supervise a
26 person who has been court-approved for conditional release at a
27 level which corresponds to the level of the person's public safety
28 risk.

29 (8) Adds a requirement that the research arm of DSHS must
30 conduct a review of the Oregon and Virginia models for review panels
31 and report back to the Legislature by December 15, 2010.

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